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CLERKMontana Water Court
STATE OF MONTANA

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43BV-0207-R-2022

Brown, Stephen R

11.00

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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SWEET GRASS - BASIN (43BV)

CLAIMANT: J Bar L Ranches LLC

OBJECTOR: J Bar L Ranches LLC

NOTICE OF INTENT TO APPEAR: Sweet Grass Canal &
Reservoir Co.

CASE 43BV-0207-R-2022

43BV 127362-00

43BV 211806-00

CLOSING ORDER

BACKGROUND

The Water Court included water right claims 43BV 127362-00 and 43BV 211806-00 in the Preliminary Decree for the Sweet Grass Creek Basin (Basin 43BV). J Bar L Ranches LLC ("J Bar L") owns the claims. The Water Court consolidated the claims into this case, along with claim 43BV 150300-00, because the preliminary decree abstracts for the three claims all contained the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE
FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE
SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 125 MINER'S
INCHES DECREED IN CASE NO. 342, SWEET GRASS COUNTY.
43BV 127362-00, 43BV 150300-00, 43BV 211806-00.

Cremer Rodeo Land & Livestock Co. (“Cremer”) owns claim 43BV 150300-00. On February 28, 2023, the Court removed claim 43BV 150300-00 from this case and reconsolidated it into case 43BV-0209-R-2023, based upon a determination that the claim is not based on the same decreed right as the two J Bar L claims. (Doc. 8.00). Removal of claim 43BV 150300-00 from this case made progress toward resolving the decree exceeded issue but did not quite reach that destination.

In addition to the decree exceeded remark, the preliminary decree abstract for J Bar L’s claim 43BV 127362-00 contains other issue remarks. J Bar L self-objected to claim 43BV 127362-00. Sweet Grass Canal & Reservoir Co. (“Sweet Grass Canal”) filed a notice of intent to appear (“NOIA”). Claim 43BV 211806-00 did not receive any issue remarks other than the decree exceeded remark, nor did it receive objections.

On April 13, 2023, J Bar L filed an “Unopposed Motion to Consolidate Implied Claim 43BV 211806-00 and Parent Claim 43BV 127362-00 to Resolve Decree Exceeded Issue Remark” (“Motion”). (Doc. 9.00). J Bar L’s Motion asks the Court to resolve its self-objection and the decree exceeded remark by combining the elements of claims 43BV 127362-00 and 43BV 211806-00 into a single claim, and dismissing claim 43BV 127362-00. J Bar L says the Motion is unopposed. Sweet Grass Canal has not filed anything to suggest that representation is incorrect.

DISCUSSION

1. Decree Exceeded Issue Remark.

A decree exceeded issue exists when the sum total of the flow rate or volume of water right claims appears to exceed the amount of water previously decreed by a district court. *In re Quigley*, 2017 MT 278, ¶ 5, 389 Mont. 283, 285, 405 P.3d 627, 630. DNRC included the decree exceeded remark on claims 43BV 127362-00 and 43BV 211806-00 because they both claimed a September 21, 1901 priority date based on the district court decree for Sweet Grass Creek and its tributaries in Case 342 (Mont. Sixth Jud. Dist., Apr. 6, 1906) (“Case 342 Decree”). In the Case 342 Decree, the District Court decreed 125 miner’s inches to Eugene Cummings with a September 21, 1901 priority date. The 125 miner’s inch flow rate is equivalent to 3.125 cubic feet per second. Even with claim

43BV 150300-00 out of this case, a small decree exceeded situation continues to exist based on sum of the flow rates for the two remaining claims:

Claim	CFS (decreed)	GPM (decreed)	Miner's inch equivalent
43BV 127362-00	3.10		124
43BV 211806-00		13.46	2
Total	3.13 ¹	1404.74 ²	126

J Bar L proposes to resolve the remark by combining the two claims into one. As J Bar L explains, claim 43BV 127362-00 was created as an implied claim in 1988 when the original right was split through the generation of an implied claim owned by the Montana State Board of Land Commissioners. *See* Master's Report, Claim No. 43BV-W-211806-00 (Mar. 23, 1988), adopted Mar. 23, 1988 (copy in claim file). The implied claim was carved out of claim 43BV 127362-00. Evidently due to either a math error or from the conversion of units, the sum of the two claims exceeded what was decreed. J Bar L later acquired ownership of implied claim 43BV 211806-00. Based upon the unity of title to the claims, J Bar L seeks to restore the flow rate to the original parent claim and retire claim 43BV 211806-00.

Combining the elements of the claims into one claim requires several modifications to claim 43BV 127362-00. First, the flow rate will change to 3.12 cfs. Second, the maximum acres will increase from 367.00 acres to 371.00 acres. And third, the point of diversion and place of use elements of claim 43BV 211806-00 will be added to claim 43BV 127362-00. J Bar L's proposal resolves the issue and will not affect other water users because the net effect is a technical reduction in flow rate to eliminate the decree exceeded issue, and the other modifications do not add more irrigated acreage than what the Court decreed in the Basin 43BV Preliminary Decree.

2. Remaining Issue Remarks.

¹ Based upon sum of the flow rates, with 13.46 gpm converted to 0.03 cfs. *See* Rule 4(a), W.R.C.E.R. (converting measurements).

² Based upon sum of the flow rates, with 3.10 cfs converted to 1391.28 gpm.

In addition to the decree exceeded remark, the preliminary decree abstract for claim 43BV 127362-00 also includes two other issue remarks that the Court must resolve:

ALTHOUGH NOT OBJECTED TO, THE ACRES IRRIGATED HAS BEEN REDUCED TO REFLECT THE CHARGE [*sic*] IN PLACE OF USE. THIS MAY BE HEARD AT THE PRELIMINARY DECREE STAGE.

POINT OF DIVERSION NO. 1 APPEARS TO BE LOCATED IN THE NWSWSW SEC 27, T4N, R15E, SWEET GRASS COUNTY.

The first remark is a notice-only remark that J Bar L does not object to. J Bar L states it concurs with the point of diversion land description correction in the second remark, so the modification will be made based upon the Court's authority under § 85-2-248(3), MCA.

ORDER

Therefore, it is ORDERED:

1. Claim 43BV 127362-00 is MODIFIED as provided in this Order, with all issue remarks resolved and removed from the claim abstract;
2. Claim 43BV 211806-00 is DISMISSED;
3. All objections and appearances are DISMISSED as resolved;
4. This case is CLOSED.

Post-decree abstracts of the claims confirming the claims are modified and the remarks removed are included with this Order.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via Electronic Mail

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****Service List Updated 4.26.23****

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 127362-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: J BAR L RANCHES LLC
PO BOX 11925
BOZEMAN, MT 59719 1925

Priority Date: SEPTEMBER 21, 1901

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.12 CFS

***Volume:** 1,154.30 AC-FT

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 371.00

***Source Name:** SWEET GRASS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSW	27	4N	15E	SWEET GRASS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: LOWERY DITCH

2		SWNWNE	34	4N	15E	SWEET GRASS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: ADAM INTAKE CANAL

3		NWSESW	36	4N	15E	SWEET GRASS
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: CRUM DITCH

Period of Use: APRIL 15 TO OCTOBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	17.00		S2SE	27	4N	15E	SWEET GRASS
2	22.00		N2NE	34	4N	15E	SWEET GRASS
3	142.00		N2	35	4N	15E	SWEET GRASS
4	44.00		SE	35	4N	15E	SWEET GRASS

5	31.00	SW	36	4N	15E	SWEET GRASS
6	4.00	E2SWSE	36	4N	15E	SWEET GRASS
7	24.00	NW	1	3N	15E	SWEET GRASS
8	70.00	NE	1	3N	15E	SWEET GRASS
9	17.00	SW	1	3N	15E	SWEET GRASS
Total:						371.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

127346-00	127347-00	127348-00	127349-00	127350-00	127351-00
127352-00	127362-00				

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: **43BV 211806-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: J BAR L RANCHES LLC
 PO BOX 11925
 BOZEMAN, MT 59719 1925

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: SWEET GRASS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.